

AMENDED IN ASSEMBLY APRIL 29, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 524

Introduced by Assembly Member Davis Bass
(Principal coauthor: Assembly Member Davis)

February 25, 2009

~~An act to amend Sections 1812.50, 1812.51, 1812.52, 1812.53, 1812.54, 1812.55, 1812.56, 1812.57, 1812.59, 1812.60, 1812.63, 1812.64, 1812.65, and 1812.67 of, and to amend the heading of Title 2.4 (commencing with Section 1812.50) of Part 4 of Division 3 of, the Civil Code, relating to contracts. An act to amend Section 1708.8 of the Civil Code, relating to privacy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 524, as amended, ~~Davis Bass. Contracts: acting schools. Privacy.~~

Existing law provides that a person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, or knowingly trespasses or commits assault with the intent to capture, as specified, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, as specified. The person who commits the act is liable for up to 3 times the amount of general and special damages, and may be liable for punitive damages. However, the sale, transmission, publication, broadcast, or use of any image or recording of the type, or under the circumstances, described does not itself constitute a violation of that provision.

This bill would create an exception to the latter provision regarding the sale, transmission, publication, broadcast, or use of an image or recording if the person sold, transmitted, published, broadcast, or used any image or recording of the type described in the provision described above with actual knowledge the images or recordings were obtained illegally. The bill would also make technical changes.

~~Existing law regulates contracts for dance studios and other services, defined to include ballroom or other types of dancing, and lessons and other services, whether given to students individually or in groups, as provided.~~

~~Existing law also provides that every contract for dance studio lessons shall be in writing and shall not require payments or financing by the buyer over a period in excess of one year. Existing law allows for the cancellation of dance studio contracts, as provided.~~

~~Existing law provides that any person who violates the provisions relating to dance studio contracts is guilty of a misdemeanor.~~

~~Existing law requires a dance studio to maintain a bond issued by a surety company and filed with the Secretary of State.~~

~~This bill would add acting schools to these provisions.~~

~~Because this bill would impose additional requirements on acting schools, the willful violation of which would be a crime, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~.
State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Individuals and their families have been harassed and*
4 *endangered by being persistently followed or chased in a manner*
5 *that puts them in reasonable fear of bodily injury, and in danger*
6 *of serious bodily injury or even death, by photographers,*
7 *videographers, and audio recorders attempting to capture images*

1 *or other reproductions of their private lives for commercial*
2 *purposes.*

3 *(b) The legitimate privacy interests of individuals and their*
4 *families have been violated by photographers, videographers, and*
5 *audio recorders who physically trespass in order to capture images*
6 *or other reproductions of their private lives for commercial*
7 *purposes, or who do so constructively through intrusive modern*
8 *visual or auditory enhancement devices, such as powerful telephoto*
9 *lenses and hyperbolic microphones that enable invasion of private*
10 *areas that would otherwise be impossible without trespassing.*

11 *(c) Such harassment and trespass threaten not only professional*
12 *public persons and their families, but also private persons and*
13 *families for whom personal tragedies or circumstances beyond*
14 *their control create media interest.*

15 *(d) There is no right, under the United States Constitution or*
16 *the California Constitution, to persistently follow or chase another*
17 *in a manner that creates a reasonable fear of bodily injury, to*
18 *trespass, or to constructively trespass through the use of intrusive*
19 *visual or auditory enhancement devices.*

20 *(e) The right to privacy and respect for private lives of*
21 *individuals and their families must be balanced against the right*
22 *of the media to gather and report the news. The right of a free*
23 *press to report details of an individual's private life must be*
24 *weighed against the rights of the individual to enjoy liberty and*
25 *privacy.*

26 *SEC. 2. Section 1708.8 of the Civil Code is amended to read:*

27 *1708.8. (a) A person is liable for physical invasion of privacy*
28 *when the defendant knowingly enters onto the land of another*
29 *person without permission or otherwise committed a trespass in*
30 *order to physically invade the privacy of the plaintiff with the*
31 *intent to capture any type of visual image, sound recording, or*
32 *other physical impression of the plaintiff engaging in a personal*
33 *or familial activity and the physical invasion occurs in a manner*
34 *that is offensive to a reasonable person.*

35 *(b) A person is liable for constructive invasion of privacy when*
36 *the defendant attempts to capture, in a manner that is offensive to*
37 *a reasonable person, any type of visual image, sound recording,*
38 *or other physical impression of the plaintiff engaging in a personal*
39 *or familial activity under circumstances in which the plaintiff had*
40 *a reasonable expectation of privacy, through the use of a visual or*

1 auditory enhancing device, regardless of whether there is a physical
2 trespass, if this image, sound recording, or other physical
3 impression could not have been achieved without a trespass unless
4 the visual or auditory enhancing device was used.

5 (c) An assault committed with the intent to capture any type of
6 visual image, sound recording, or other physical impression of the
7 plaintiff is subject to subdivisions (d), (e), and (h).

8 (d) A person who commits any act described in subdivision (a),
9 (b), or (c) is liable for up to three times the amount of any general
10 and special damages that are proximately caused by the violation
11 of this section. This person may also be liable for punitive damages,
12 subject to proof according to Section 3294. If the plaintiff proves
13 that the invasion of privacy was committed for a commercial
14 purpose, the defendant shall also be subject to disgorgement to the
15 plaintiff of any proceeds or other consideration obtained as a result
16 of the violation of this section.

17 (e) A person who directs, solicits, actually induces, or actually
18 causes another person, regardless of whether there is an
19 employer-employee relationship, to violate any provision of
20 subdivision (a), (b), or (c) is liable for any general, special, and
21 consequential damages resulting from each said violation. In
22 addition, the person that directs, solicits, instigates, induces, or
23 otherwise causes another person, regardless of whether there is an
24 employer-employee relationship, to violate this section shall be
25 liable for punitive damages to the extent that an employer would
26 be subject to punitive damages pursuant to subdivision (b) of
27 Section 3294.

28 (f) Sale, transmission, publication, broadcast, or use of any
29 image or recording of the type, or under the circumstances,
30 described in this section shall not itself constitute a violation of
31 this section, ~~nor shall this section~~ *unless the person sold,*
32 *transmitted, published, broadcast, or used any image or recording*
33 *of the type described in this section with actual knowledge the*
34 *images or recordings were obtained illegally. This section shall*
35 *not be construed to limit all other rights or remedies of plaintiff in*
36 *law or equity, including, but not limited to, the publication of*
37 *private facts.*

38 (g) This section shall not be construed to impair or limit any
39 otherwise lawful activities of law enforcement personnel or
40 employees of governmental agencies or other entities, either public

1 or private who, in the course and scope of their employment, and
2 supported by an articulable suspicion, attempt to capture any type
3 of visual image, sound recording, or other physical impression of
4 a person during an investigation, surveillance, or monitoring of
5 any conduct to obtain evidence of suspected illegal activity, the
6 suspected violation of any administrative rule or regulation, a
7 suspected fraudulent insurance claim, or any other suspected
8 fraudulent conduct or activity involving a violation of law or
9 pattern of business practices adversely affecting the public health
10 or safety.

11 (h) In any action pursuant to this section, the court may grant
12 equitable relief, including, but not limited to, an injunction and
13 restraining order against further violations of subdivision (a), ~~or~~
14 (b), *or (c)*.

15 (i) The rights and remedies provided in this section are
16 cumulative and in addition to any other rights and remedies
17 provided by law.

18 (j) It is not a defense to a violation of this section that no image,
19 recording, or physical impression was captured or sold.

20 (k) For the purposes of this section, “for a commercial purpose”
21 means any act done with the expectation of a sale, financial gain,
22 or other consideration. A visual image, sound recording, or other
23 physical impression shall not be found to have been, or intended
24 to have been captured for a commercial purpose unless it is
25 intended to be, or was in fact, sold, published, or transmitted.

26 (l) For the purposes of this section, “personal and familial
27 activity” includes, but is not limited to, intimate details of the
28 plaintiff’s personal life, interactions with the plaintiff’s family or
29 significant others, or other aspects of plaintiff’s private affairs or
30 concerns. Personal and familial activity does not include illegal
31 or otherwise criminal activity as delineated in subdivision (f).
32 However, “personal and familial activity” shall include the
33 activities of victims of crime in circumstances ~~where either~~
34 ~~subdivision (a) or (b), or both,~~ *under which subdivision (a), (b),*
35 *or (c) would apply.*

36 (m) The provisions of this section are severable. If any provision
37 of this section or its application is held invalid, that invalidity shall
38 not affect other provisions or applications that can be given effect
39 without the invalid provision or application.

1 ~~SECTION 1.—The heading of Title 2.4 (commencing with~~
2 ~~Section 1812.50) of Part 4 of Division 3 of the Civil Code is~~
3 ~~amended to read:~~

4
5 ~~TITLE 2.4. CONTRACTS FOR DANCE STUDIO AND~~
6 ~~ACTING SCHOOL LESSONS AND OTHER SERVICES~~
7

8 ~~SEC. 2.—Section 1812.50 of the Civil Code is amended to read:~~

9 ~~1812.50. (a) The Legislature finds that there exists in~~
10 ~~connection with a substantial number of contracts for dance studio~~
11 ~~or acting school lessons and other services, sales practices, and~~
12 ~~business and financing methods which have worked a fraud, deceit,~~
13 ~~imposition, and financial hardship upon the people of this state;~~
14 ~~that existing legal remedies are inadequate to correct these abuses;~~
15 ~~that the dance studio and acting school industry has a significant~~
16 ~~impact upon the economy and well-being of this state and its local~~
17 ~~communities; and that the provisions of this title relating to these~~
18 ~~contracts are necessary for the public welfare.~~

19 ~~(b) The Legislature declares that the purpose of this title is to~~
20 ~~safeguard the public against fraud, deceit, imposition, and financial~~
21 ~~hardship, and to foster and encourage competition, fair dealing,~~
22 ~~and prosperity in the field of dance studio and acting school lessons~~
23 ~~and other services by prohibiting or restricting false or misleading~~
24 ~~advertising, onerous contract terms, harmful financial practices,~~
25 ~~and other unfair, dishonest, deceptive, destructive, unscrupulous,~~
26 ~~fraudulent, and discriminatory practices by which the public has~~
27 ~~been injured in connection with contracts for dance studio or acting~~
28 ~~school lessons and other services.~~

29 ~~SEC. 3.—Section 1812.51 of the Civil Code is amended to read:~~

30 ~~1812.51. As used in this title, “contract for dance studio or~~
31 ~~acting school lessons and other services” means a contract for~~
32 ~~instruction in ballroom or other types of dancing, and includes~~
33 ~~acting school lessons, and lessons and other services, whether~~
34 ~~given to students individually or in groups. This title does not~~
35 ~~include contracts for professional services rendered or furnished~~
36 ~~by a person licensed under Division 2 (commencing with Section~~
37 ~~500) of the Business and Professions Code, or contracts for~~
38 ~~instruction at schools operating pursuant to the Education Code.~~

39 ~~SEC. 4.—Section 1812.52 of the Civil Code is amended to read:~~

1 ~~1812.52.— Every contract for dance studio or acting school~~
2 ~~lessons and other services shall be in writing and shall be subject~~
3 ~~to this title. A copy of the written contract shall be given to the~~
4 ~~customer at the time he or she signs the contract.~~

5 ~~SEC. 5.— Section 1812.53 of the Civil Code is amended to read:~~

6 ~~1812.53.— (a) No contract for dance studio or acting school~~
7 ~~lessons and other services shall require payments or financing by~~
8 ~~the buyer over a period in excess of one year from the date the~~
9 ~~contract is entered into, nor shall the term of any contract be~~
10 ~~measured by the life of the buyer. However, the lessons and other~~
11 ~~services to be rendered to the buyer under the contract may extend~~
12 ~~over a period not to exceed seven years from the date the contract~~
13 ~~is entered into.~~

14 ~~(b) All contracts for dance studio or acting school lessons and~~
15 ~~other services that may be in effect between the same seller and~~
16 ~~the same buyer, the terms of which overlap for any period, shall~~
17 ~~be considered as one contract for the purposes of this title.~~

18 ~~SEC. 6.— Section 1812.54 of the Civil Code is amended to read:~~

19 ~~1812.54.— (a) Every contract for dance studio or acting school~~
20 ~~lessons and other services shall provide that performance of the~~
21 ~~agreed-upon lessons will begin within six months from the date~~
22 ~~the contract is entered into.~~

23 ~~(b) A contract for dance studio or acting school lessons and~~
24 ~~other services may be canceled by the student at any time provided~~
25 ~~he or she gives written notice to the dance studio or acting school~~
26 ~~at the address specified in the contract. When a contract for dance~~
27 ~~studio or acting school lessons and other services is canceled the~~
28 ~~dance studio or acting school shall calculate the refund on the~~
29 ~~contract, if any, on a pro rata basis. The dance studio or acting~~
30 ~~school shall refund any moneys owed to the student within 10 days~~
31 ~~of receiving the cancellation notice, unless the student owes the~~
32 ~~dance studio or acting school money for studio lessons or other~~
33 ~~services received prior to the cancellation, in which case any~~
34 ~~moneys owed the dance studio or acting school shall be deducted~~
35 ~~by the dance studio from the refund owed to the student and the~~
36 ~~balance, if any, shall be refunded as specified above. A dance~~
37 ~~studio or acting school shall not charge a cancellation fee, or other~~
38 ~~fee, for cancellation of the contract by the student.~~

39 ~~(c) Every contract for dance studio or acting school lessons and~~
40 ~~other services shall contain a written statement of the hourly rate~~

1 charged for each type of lesson for which the student has
2 contracted. If the contract includes dance studio or acting school
3 lessons that are sold at different per-hour rates, the contract shall
4 contain separate hourly rates for each different type of lesson sold.
5 All other services for which the student has contracted that are not
6 capable of a per-hour charge shall be set forth in writing in specific
7 terms. The statement shall be contained in the dance studio or
8 acting school contract before the contract is signed by the buyer.

9 (d) Every dance studio or acting school subject to Sections
10 1812.64 and 1812.65 shall include in every contract for dance
11 studio or acting school lessons or other services a statement that
12 the studio is bonded and that information concerning the bond may
13 be obtained by writing to the office of the Secretary of State.

14 SEC. 7. Section 1812.55 of the Civil Code is amended to read:

15 1812.55. No contract for dance studio or acting school lessons
16 and other services shall require or entail the execution of any note
17 or series of notes by the buyer which, when separately negotiated,
18 will cut off as to third parties any right of action or defense which
19 the buyer may have against the seller.

20 SEC. 8. Section 1812.56 of the Civil Code is amended to read:

21 1812.56. No right of action or defense arising out of a contract
22 for dance studio or acting school lessons and other services which
23 the buyer has against the seller, and which would be cut off by
24 assignment, shall be cut off by assignment of the contract to any
25 third party whether or not he or she acquires the contract in good
26 faith and for value unless the assignee gives notice of the
27 assignment to the buyer as provided in this section and, within 30
28 days of the mailing of notice, receives no written notice of the
29 facts giving rise to the claim or defense of the buyer. A notice of
30 assignment shall be in writing addressed to the buyer at the address
31 shown on the contract and shall identify the contract and inform
32 the buyer that he or she shall, within 30 days of the date of mailing
33 of the notice, notify the assignee in writing of any facts giving rise
34 to a claim or defense which he or she may have. The notice of
35 assignment shall state the name of the seller and buyer, a
36 description of the lessons and other services, the contract balance,
37 and the number and amount of the installments.

38 SEC. 9. Section 1812.57 of the Civil Code is amended to read:

39 1812.57. (a) Every contract for dance studio or acting school
40 lessons and other services shall contain a clause providing that if,

1 by reason of death or disability, the person agreeing to receive
2 lessons and other services is unable to receive all lessons and other
3 services for which he or she has contracted, the person and his or
4 her estate shall be relieved from the obligation of making payment
5 for lessons and other services other than those received prior to
6 death or the onset of disability, and that if the buyer has prepaid
7 any sum for lessons and other services so much of that sum as is
8 allocable to lessons and other services he or she has not taken shall
9 be promptly refunded to the buyer or his or her representative.

10 (b) Notwithstanding the provisions of any contract to the
11 contrary, whenever the contract price is payable in installments
12 and the buyer is relieved from making further payments or entitled
13 to a refund under this section, the buyer shall be entitled to receive
14 a refund or refund credit of so much of the cash price as is allocable
15 to the lessons or other services not actually received by the buyer.
16 The refund of the finance charge shall be computed according to
17 the "sum of the balances method," also known as the "Rule of 78."

18 SEC. 10. ~~Section 1812.59 of the Civil Code is amended to~~
19 ~~read:~~

20 1812.59. ~~Any contract for dance studio or acting school lessons~~
21 ~~and other services which does not comply with the applicable~~
22 ~~provisions of this title shall be void and unenforceable as contrary~~
23 ~~to public policy.~~

24 SEC. 11. ~~Section 1812.60 of the Civil Code is amended to~~
25 ~~read:~~

26 1812.60. ~~Any contract for dance studio or acting school lessons~~
27 ~~and other services entered into in reliance upon any willful and~~
28 ~~false, fraudulent, or misleading information, representation, notice,~~
29 ~~or advertisement of the seller shall be void and unenforceable.~~

30 SEC. 12. ~~Section 1812.63 of the Civil Code is amended to~~
31 ~~read:~~

32 1812.63. ~~Any person who violates any provision of this title~~
33 ~~relating to dance studio or acting school contracts is guilty of a~~
34 ~~misdemeanor. Any superior court of this state has jurisdiction in~~
35 ~~equity to restrain and enjoin the violation of any of the provisions~~
36 ~~of this title relating to dance studio or acting school contracts.~~

37 ~~The duty to institute actions for violation of those provisions of~~
38 ~~this title, including equity proceedings to restrain and enjoin~~
39 ~~violations, is hereby vested in the Attorney General, district~~
40 ~~attorneys, and city attorneys. The Attorney General, any district~~

1 attorney, or any city attorney may prosecute misdemeanor actions
2 or institute equity proceedings, or both.

3 This section shall not be deemed to prohibit the enforcement by
4 any person of any right provided by this or any other law.

5 SEC. 13. Section 1812.64 of the Civil Code is amended to
6 read:

7 1812.64. Every dance studio or acting school shall maintain a
8 bond issued by a surety company admitted to do business in this
9 state. The principal sum of the bond shall be 25 percent of the
10 dance studio's or acting school's gross income from the studio
11 business in this state during the studio's last fiscal year, except
12 that the principal sum of the bond shall not be less than twenty-five
13 thousand dollars (\$25,000) in the first or any subsequent year of
14 operation.

15 A copy of the bond shall be filed with the Secretary of State,
16 together with a declaration under penalty of perjury signed by the
17 owner of the studio stating the dance studio's or acting school's
18 gross income from the dance studio or acting school business in
19 this state during the last fiscal year. The information contained in
20 the declaration shall not be subject to public inspection. If the
21 person in whose name the bond is issued severs his or her
22 relationship with the bonded dance studio or acting school, the
23 new owner shall, as a condition of doing business, notify the
24 Secretary of State of the change of ownership and of proof of
25 compliance with Sections 1812.64 and 1812.65.

26 SEC. 14. Section 1812.65 of the Civil Code is amended to
27 read:

28 1812.65. The bond required by Section 1812.64 shall be in
29 favor of the State of California for the benefit of any person who,
30 after entering into a contract for dance studio or acting school
31 lessons and other services with the dance studio or acting school,
32 is damaged by fraud or dishonesty or failure to provide the services
33 of the studio in performance of the contract.

34 SEC. 15. Section 1812.67 of the Civil Code is amended to
35 read:

36 1812.67. (a) Sections 1812.64 and 1812.65 do not apply to
37 any dance studio or acting school which requires or receives less
38 than fifty dollars (\$50) in advance payments from or on behalf of
39 each student for dance studio or acting school lessons or other
40 services which are to be rendered by the studio in the future and

1 such advance payments are not required or received by the studio
2 from each student more frequently than once every 30 days.

3 ~~(b) Sections 1812.53, 1812.54, 1812.64, and 1812.65 do not~~
4 ~~apply to a dance studio which only offers instruction in ballet,~~
5 ~~modern, jazz, tap dance, or any combination thereof, to persons~~
6 ~~under 21 years of age pursuant to a contract for dance studio~~
7 ~~lessons that provides all of the following: (1) a total payment of~~
8 ~~less than five hundred dollars (\$500), (2) that all agreed-upon~~
9 ~~lessons will be offered within four months from the date the~~
10 ~~contract is entered, and (3) that the contract may be canceled and~~
11 ~~all money paid for instruction not yet received will be refunded~~
12 ~~within 10 days of cancellation, if the dance student cancels within~~
13 ~~three days after receiving the first lesson, or if the dance student~~
14 ~~cancels at any time after moving his or her residence to a location~~
15 ~~more than 15 miles from the location of the dance studio.~~

16 ~~(c) Sections 1812.53, 1812.54, 1812.64, and 1812.65 do not~~
17 ~~apply to any organization that has qualified for a tax exemption~~
18 ~~under Section 501(c)(3) of the Internal Revenue Code and which~~
19 ~~receives a direct grant of funds from the California Arts Council.~~

20 ~~SEC. 16. No reimbursement is required by this act pursuant to~~
21 ~~Section 6 of Article XIII B of the California Constitution because~~
22 ~~the only costs that may be incurred by a local agency or school~~
23 ~~district will be incurred because this act creates a new crime or~~
24 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
25 ~~for a crime or infraction, within the meaning of Section 17556 of~~
26 ~~the Government Code, or changes the definition of a crime within~~
27 ~~the meaning of Section 6 of Article XIII B of the California~~
28 ~~Constitution.~~